

§ 776.54

other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained, is competent to perform the duties and has all appropriate credentials, including security clearances, to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved]

[65 FR 15060, Mar. 21, 2000, as amended at 66 FR 70165, Nov. 21, 2002]

§ 776.54 Responsibilities of a subordinate attorney.

(a) *Responsibilities of a subordinate attorney:*

(1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See § 776.10.

(b) [Reserved]

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) *Responsibilities regarding non-attorney assistants.* With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is

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compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved]

§ 776.56 Professional independence of a covered USG attorney.

(a) *Professional independence of a covered USG attorney.*

(1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney's status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b)(1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of